

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ABB POWER T&D COMPANY, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 97-417-MMS
	:	
LANDIS & GYR UTILITIES SERVICES	:	
HOLDINGS, INC., LANDIS & GYR	:	<b>REDACTED</b>
UTILITIES SERVICES, INC. and	:	<b><u>PUBLIC VERSION</u></b>
ELECTROWATT AG,	:	
	:	
Defendant.	:	

**ELSTER ELECTRICITY LLC'S  
MOTION TO ENFORCE SETTLEMENT AGREEMENT**

Elster Electricity LLC ("Elster") hereby moves to enforce the audit provisions of a 1998 Settlement Agreement ("Agreement") (Ex. A) entered in settlement of a patent infringement action ("Action"). The Action was pending before now retired Honorable Murray Schwartz, and the Agreement was entered into with the assistance of Magistrate Judge Thyng. This Court retained jurisdiction to enforce the Agreement (Ex. B).

The original parties to the Action and Agreement were ABB Power T&D Company, Inc., the patent owner/plaintiff, and Landis&Gyr Utilities Services, Inc. et al., the defendants. ABB is now known as Elster Electricity LLC and Landis&Gyr is now known as Landis+Gyr, Inc. ("Landis"). Elster is the successor to the named plaintiff in the Action. This motion is necessitated by Landis' refusal to abide by the audit provisions of the Agreement. Landis' full cooperation in the conduct of the audit would have revealed whether Landis is also in breach of the royalty payment provisions of the Agreement. Elster seeks a 120 day discovery period to investigate those facts that it should have been permitted to discover through the audit provisions

of the Agreement. Elster may request a hearing on this matter following the conclusion of the discovery period.

## **I. STATEMENT OF FACTS**

The Agreement includes a Patent Cross License Agreement (the “PCLA”) under which Landis agrees to pay to Elster royalties on sales of products that embody any one of six sets of features described in the PCLA (Ex. C, ¶¶ 1.6(a)-(f)). The PCLA permits Elster to audit Landis’ records and documentation to verify the accuracy of royalties due Elster (Ex. C, ¶ 4.5). The PCLA further requires that any litigation brought based on a failure of Landis to pay royalties must be commenced within two years of the date of first sale of the alleged royalty bearing product (Ex. C, ¶ 11.2). The PCLA specifies that the parties shall “engage in good faith discussions to resolve the dispute amicably and without resort to litigation” before commencing such litigation (Ex. C, ¶ 11.1).

On March 9, 2001, Elster began an audit of Landis’s records to determine whether all royalties had been paid (Ex. D). The audit revealed that Landis had not paid royalties on all of its “S4” and “ZMC” meter products (“Products”), even though they all bear the same trade designation. In July 2002, in an attempt to resolve the matter without resort to litigation, the parties agreed that Landis would provide an “initial statement” to Elster explaining why royalties had not been paid on those products (Ex. E). The parties further agreed that they would attempt to resolve any disputes arising from the initial statement within a 210 day period following its receipt (“the negotiation period”). In addition, Landis agreed that the PCLA’s two-year limitation on commencement of litigation would be tolled until the expiration of the negotiation period. A hiatus ensued, and Landis did not provide the initial statement until January 26, 2005 (Ex. F).

The technical information provided in Landis's initial statement led Elster to conclude that the Products were indeed royalty bearing and that Landis had breached the royalty payment provisions of the Agreement. On July 21, 2005, Elster put Landis on notice of the breach (Ex. G). Following an agreement to extend the 210 day negotiation period, Elster provided Landis with additional details supporting its charge of breach on October 18, 2005 (Ex. H). Landis first responded that Elster had mischaracterized Landis' initial statement. Then, on November 28, Landis responded with additional technical information that it had not previously supplied (Ex. I). By this juncture, the nature of the technical information was such that Elster required a technical consultant to assist it in its evaluation, and the parties agreed to extend the negotiation period to January 12, 2006. After Elster located and retained a consultant, on January 6, 2006, Elster wrote to Landis and requested (i) additional technical information and (ii) permission to show Landis' confidential technical information to its consultant (Ex. J). On January 9, 2006, Landis authorized disclosure of its information to Elster's consultant but failed to supply the additional information that Elster had requested. With the January 12 expiration of the extended negotiation period looming, Elster and Landis agreed to another, one week extension of the negotiation period to January 19, 2006 (Ex. K). Landis finally supplied the additional information requested by Elster, after the close of business on January 17 and just two days before the January 19 expiration of the extended negotiation period (Ex. L). Elster's request for an additional extension of the negotiation period, to provide the additional information to its consultant and to allow the consultant time to consider it, was flatly denied by Landis (Ex. M). Landis stated that it is "confident that [Elster has] more than enough information to conclude the correctness of [Landis'] position with respect to the license."

Landis' refusal to allow Elster's consultant to evaluate the new information that it just recently provided has frustrated Elster's efforts to exercise its audit rights and its attempt to resolve this matter in good faith. Elster has now been forced to file this motion to take measures to determine whether Landis owes Elster additional royalties. In fact, Landis' initial statement to Elster did indicate that the Products on which Landis refuses to pay royalties are royalty bearing.

## II. ARGUMENT

Paragraph 4.5 of the PCLA provides Elster the right to conduct an audit of Landis' records and documentation "to verify the royalties due under this Agreement." Paragraph 11.1 of the PCLA further provides that "both parties shall engage in good faith discussions in an effort to amicably resolve any dispute prior to commencement of litigation thereon." Landis has frustrated Elster's efforts to complete its audit of the royalty payments due under the PCLA. Elster, on the other hand, has tolerated Landis' conduct over the nearly four year period of this dispute. It has now become clear that Landis is trying to stymie Elster's efforts to learn whether the Products are royalty bearing.

Paragraph 1.6(b) of the PCLA requires that Landis pay royalties on the following:

[any] programmable meter for electronically measuring electrical energy used by a residential, commercial or industrial customer, the meter comprising processing circuitry receiving voltage and current signals corresponding to at least two phase service, the processing circuitry comprising plural analog to digital (A/D) converters, each A/D converter having . . . a digital resolution of 21 bits (20 bits plus sign).

Exhibit C, ¶ 1.6(b). In its initial statement concerning the Products, Landis stated:

REDACTED

Exhibit F §§ II.B and II.D.

This information states that

REDACTED

Even if true, Elster does not believe this changes the fact that the A/D converter has REDACTED. If Elster is right, the Products are royalty bearing. However, Landis will not allow Elster to get to the bottom of the issue. For example, Landis refused to provide source code to Elster's lawyers that would enable it, working with its consultant, to determine whether the products fall under the PCLA (Ex. N, Item 2). Landis has made it impossible for Elster to evaluate the subsequent information that Landis has provided and to ask follow-up questions.

It is now apparent that Landis must be compelled to cooperate and that only Court-ordered discovery will result in the information Elster requires to assess whether the Products are royalty bearing. It bears repeating that Landis' initial statement clearly reveals that they are, but Landis' subsequent characterizations have confused the issue.

In light of the foregoing, Elster requests an order granting a 120 day period during which it can propound written discovery and, if needed, take depositions. At the conclusion of the discovery period, Elster may request a hearing to receive evidence for the purpose of determining whether Landis has breached the royalty provisions of the PCLA.

### **III. CONCLUSION**

For all of the foregoing reasons, Elster requests the relief set forth in the proposed order accompanying this motion.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Julia Heaney (#3052)

Julia Heaney (#3052)  
1201 N. Market Street  
P.O. Box 1347  
Wilmington, DE 19899  
(302) 658-9200  
*Attorneys for Movant*  
*Eslter Electricity LLC*

OF COUNSEL:

Steven J. Rocci  
Steven B. Samuels  
Vincent J. Roccia  
WOODCOCK WASHBURN LLP  
One Liberty Place, 46<sup>th</sup> Floor  
Philadelphia, PA 19103

Original Filing: January 20, 2006

Redacted Filing: February 9, 2006

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ABB POWER T&D COMPANY, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 97-417-MMS
	:	
LANDIS & GYR UTILITIES SERVICES	:	
HOLDINGS, INC., LANDIS & GYR	:	
UTILITIES SERVICES, INC. and	:	
ELECTROWATT AG,	:	
	:	
Defendant.	:	

**[PROPOSED] ORDER**

Having considered the motion of Elster Electricity LLC ("Elster") to enforce the audit provisions of the Settlement Agreement entered in this matter, it is hereby ORDERED:

Elster shall be entitled to take discovery concerning the structure, function and operation of Landis+Gyr's S4 and ZMC meters for the purpose of allowing Elster to make a determination as to whether the meters are covered by Paragraph 1.6 (b) of the Patent Cross License Agreement ("PCLA") that forms a part of the Settlement Agreement.

The discovery period shall commence upon the entry date of this Order and shall conclude 120 days thereafter.

Within 15 days of the conclusion of the discovery period, Elster may request a hearing to receive evidence for the purpose of determining whether Landis+Gyr has breached the royalty payment provisions of the PCLA.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
J.

**RULE 7.1.1 CERTIFICATE**

Pursuant to D. Del. L.R. 7.1.1, this is to certify that counsel for Elster has discussed the subject matter of this motion with counsel for Landis+Gyr, and has not been able to reach agreement on the matters therein.

/s/ Julia Heaney (#3052)  
Julia Heaney

# **EXHIBIT A**

**SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is hereby made and effective as of the 1<sup>st</sup> day of October, 1998 between ABB Power T&D Company Inc. ("ABB") and Landis & Gyr Utilities Services, Inc. ("L&GUS"), Landis & Gyr Utilities Services Holdings, Inc. ("L&GUSH"), Electrowatt AG ("Electrowatt"), Siemens Metering Ltd. ("SML") (which includes the former metering business of Landis & Gyr (Europe) AG) and Siemens Power Transmission and Distribution LLC ("ST&D") (which includes the former metering business of L&GUS).

WHEREAS, ABB filed a lawsuit and amendments thereto in the United States District Court for the District of Delaware (the "District Court") entitled ABB Power T&D Company, Inc. v. Landis & Gyr Utilities Services, Inc., et al., Case No. 97-417 MMS (the "Litigation").

WHEREAS, ABB alleged in the Litigation infringement of United States Patent Nos. 5,537,333; 5,544,089; 5,548,527; 5,555,508; 5,621,629; 5,631,843; and 5,537,029;

WHEREAS, counterclaims and amendments thereto (the "Counterclaim") were filed alleging that ABB infringed United States Patent No. 4,902,964 in the Litigation;

NOW, THEREFORE, in consideration of the obligations and promises contained herein, the adequacy and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. ABB, SML and ST&D will dismiss the Litigation and Counterclaim with prejudice pursuant to the form of order attached hereto as Exhibit A.

2. ABB, L&GUS, L&GUSH and Electrowatt will dismiss the Litigation and Counterclaim with prejudice pursuant to the form of order attached hereto as Exhibit A.

3. ABB, SML, ST&D, L&GUS, L&GUSH and Electrowatt will abide by the terms of this Agreement and the Patent Cross-License Agreement, attached hereto as Exhibit B, which is executed contemporaneously with this Agreement and incorporated by reference herein.

4. (a) The parties to this Agreement, for themselves and for their directors, officers, partners, employees, servants, agents, attorneys to this Agreement, subrogors, subrogees, predecessors, successors, parents, subsidiaries and affiliates (collectively, the "Releasors"), do hereby forever release and discharge each of the other Releasors and all of their direct and indirect customers from any and all actions and causes of action, suits, debts, obligations, controversies, agreements, promises, judgments, damages, liens, claims and demands whatsoever, in law or in equity, which any of the Releasors have had, or may now have, related to the allegations in the Litigation, Counterclaim and any causes of action related to the ABB Licensed Patents and L&G/Siemens Licensed Patents as defined in the Patent Cross-License Agreement. However, no release or discharge is given or made with respect to this Agreement or the Patent Cross-License Agreement contemporaneously executed herewith.

(b) The Releasors intend the above release to be effective regardless of whether the basis for any claim or cause of action released is now known to or anticipated by the parties, and shall be effective even if facts relevant to this Agreement are found, after the effective date of this Agreement, to be different from the facts believed or assumed to be true as of the effective date of this Agreement. The Releasors acknowledge that they are each aware of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Releasors agree to expressly waive any rights either of them may have under this Code section or under federal, state or common law statutes or judicial decisions of similar nature, and knowingly and voluntarily waive such unknown claims.

5. This Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Agreement or of any other term or provision hereof.

6. (a) This Agreement shall be binding upon and inure to the benefit of the parties, their successors in interest and assigns.

(b) This Agreement and the Patent Cross-License Agreement executed in connection herewith contain the entire agreement between the parties hereto with respect to the subject matter hereof and thereof and supersedes all prior agreements and undertakings between the parties relating to the subject matter hereof and thereof.

7. This Agreement and the Patent Cross-License Agreement shall not be modified except in writing by the parties.

8. The parties to this Agreement acknowledge that they have read this Agreement, have consulted legal counsel as to its effect, and have received advice of counsel as to its effect.

9. The parties warrant that they have made no assignment, transfer, conveyance or other disposition of any of the causes of action set forth in the Litigation.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

11. The parties agree and consent to the continued jurisdiction of the District Court over the parties and this matter for the purpose of enforcing this Agreement and the Patent Cross-License Agreement.

12. This Agreement may be signed in multiple originals. All individuals signing for a party represent and warrant that they have actual authority to execute this Agreement on behalf of that party.

13. Each of the parties shall bear their own costs and attorney fees.

14. This Agreement may be executed by a facsimile signature in two or more counterparts, each of which shall constitute an original. Provided, however, if one or more signatures are exchanged in facsimile, the original signature pages shall be exchanged within a reasonable time thereafter.

IN WITNESS WHEREOF, the undersigned parties have executed this agreement.

ABB POWER T&D COMPANY INC.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**LANDIS & GYR UTILITIES SERVICES, INC.**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**LANDIS & GYR UTILITIES SERVICES HOLDINGS, INC.**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**ELECTROWATT AG**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

SIEMENS METERING LTD. (which includes the former metering  
business of Landis & Gyr (Europe) AG)

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

SIEMENS POWER TRANSMISSION & DISTRIBUTION, LLC  
(which includes the former metering business of Landis & Gyr  
Utilities Services, Inc.)

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**ABB POWER T&D COMPANY INC.**

**Plaintiff,**

**v.**

**LANDIS & GYR UTILITIES SERVICES  
HOLDINGS, INC., LANDIS & GYR  
UTILITIES SERVICES, INC. and  
ELECTROWATT AG,**

**Defendants.**

**Civil Action No. 97-417MMS**

**Order of Dismissal**

Pursuant to Federal Rule of Civil Procedure 41, the claims of Siemens Metering Ltd. ("SML") and Siemens Power Transmission and Distribution LLC ("ST&D") against ABB Power T&D Company Inc. ("ABB") and the claims of ABB against SML and ST&D are hereby dismissed with prejudice, according to the Settlement Agreement between the parties. The claims of Landis & Gyr Utilities Services Holdings, Inc. ("L&GUSH"), Landis & Gyr Utilities Services, Inc. ("L&GUS") and Electrowatt AG ("Electrowatt") against ABB and the claims of ABB against L&GUSH, L&GUS and Electrowatt are hereby dismissed without prejudice, according to the Settlement Agreement between the parties.

**Each party to bear its own costs, expenses and attorney fees.**

This Court retains jurisdiction over the parties and the subject matter for the purpose of enforcing the Settlement Agreement and the Patent Cross-License Agreement executed in connection therewith, both of which are expressly incorporated herein by reference.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District Court Judge

11. The parties agree and consent to the continued jurisdiction of the District Court over the parties and this matter for the purpose of enforcing this Agreement and the Patent Cross-License Agreement.

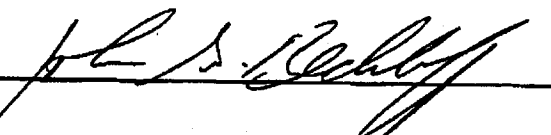
12. This Agreement may be signed in multiple originals. All individuals signing for a party represent and warrant that they have actual authority to execute this Agreement on behalf of that party.

13. Each of the parties shall bear their own costs and attorney fees.

14. This Agreement may be executed by a facsimile signature in two or more counterparts, each of which shall constitute an original. Provided, however, if one or more signatures are exchanged in facsimile, the original signature pages shall be exchanged within a reasonable time thereafter.

IN WITNESS WHEREOF, the undersigned parties have executed this agreement.

ABB POWER T&D COMPANY INC.

By:   
Date: OCT. 14, 1998

Title: Executive Vice President

## LANDIS &amp; GYR UTILITIES SERVICES, INC.

By: Date: 10-14-98Title: President & CEO

## LANDIS &amp; GYR UTILITIES SERVICES HOLDINGS, INC.

By: Date: 10-14-98Title: President & CEO

## ELECTROWATT AG

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

LANDIS & GYE UTILITIES SERVICES, INC.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

LANDIS & GYE UTILITIES SERVICES HOLDINGS, INC.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

ELECTROWATT AG

By: Phil A. Peter Schmidhauser

Date: 20.10.98 20.10.98

Title: LEGAL COUNSEL Legal Counsel

SIEMENS METERING LTD. (which includes the former metering  
business of Landis & Gyr (Europe) AG)

By: [Signature]

Date: 20.10.98

20.10.98

Title: VP Digital Services

President

SIEMENS POWER TRANSMISSION & DISTRIBUTION, LLC  
(which includes the former metering business of Landis & Gyr  
Utilities Services, Inc.)

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

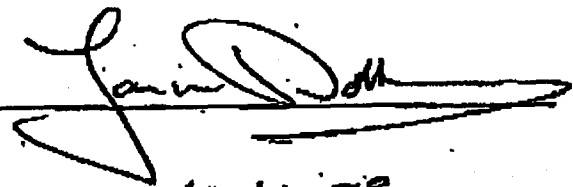
**SIEMENS METERING LTD.** (which includes the former metering  
business of Landis & Gyr (Europe) AG)

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**SIEMENS POWER TRANSMISSION & DISTRIBUTION, LLC**  
(which includes the former metering business of Landis & Gyr  
Utilities Services, Inc.)

By:  \_\_\_\_\_

Date: 10-14-98

Title: PRESIDENT & CEO.

# **EXHIBIT B**

( 55 )

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF DELAWARE**

ABB POWER T&D COMPANY, INC.	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 97-417-MMS
	§	
LANDIS & GYR UTILITIES	§	
SERVICES HOLDINGS, INC.,	§	
LANDIS & GYR UTILITIES	§	
SERVICES, INC. and	§	
ELECTROWATT AG,	§	
	§	
Defendants.	§	

**STIPULATION AND ORDER OF DISMISSAL**

Pursuant to Federal Rule of Civil Procedure 41, the claims of Siemens Metering Ltd. ("SML") and Siemens Power Transmission and Distribution LLC ("ST&D") against ABB Power T&D Company Inc. ("ABB") and the claims of ABB against SML and ST&D are hereby dismissed with prejudice, according to the Settlement Agreement between the parties. The claims of Landis & Gyr Utilities Services Holdings, Inc. ("L&GUSH"), Landis & Gyr Utilities Services, Inc. ("L&GUS") and Electrowatt AG ("Electrowatt") against ABB and the claims of ABB against L&GUSH, L&GUS and Electrowatt are hereby dismissed without prejudice, according to the Settlement Agreement between the parties.

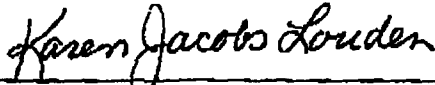
Each party to bear its own costs, expenses and attorney fees.

This Court retains jurisdiction over the parties and the subject matter for the purpose of enforcing the Settlement Agreement and the Patent Cross-License Agreement

FROM MNA@T

executed in connection therewith, both of which are expressly incorporated herein by reference.

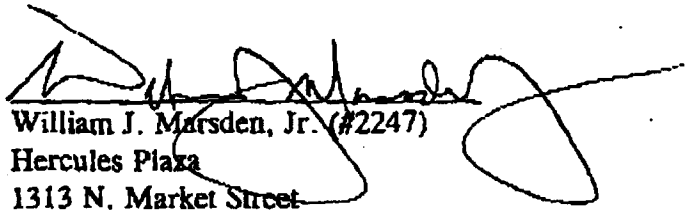
MORRIS, NICHOLS, ARSHT &  
TUNNELL



Donald F. Parsons, Jr. (#437)  
Karen Jacobs Loudon (#2881)  
1201 North Market Street  
P.O. Box 1347  
Wilmington, DE 19899  
(302) 658-9200

*Counsel For Plaintiff*  
**ABB POWER T&D COMPANY**

POTTER ANDERSON & CORROON



William J. Marsden, Jr. (#2247)  
Hercules Plaza  
1313 N. Market Street  
P.O. Box 951  
Wilmington, DE 19899-0951  
(302) 984-6000

*Counsel For Defendants*  
**LANDIS & GYR UTILITIES SERVICES  
HOLDINGS, INC., LANDIS & GYR  
UTILITIES SERVICES, INC.,  
ELECTROWATT AG, SIEMENS METERING LTD.  
and SIEMENS POWER TRANSMISSION AND  
DISTRIBUTION LLC**

SO ORDERED this 26<sup>th</sup> day of Oct., 1998.

  
United States District Court Judge

346152v1

# EXHIBIT C

## **PATENT CROSS-LICENSE AGREEMENT**

This Patent Cross-License Agreement ("Agreement") is entered into as of October 1, 1998, by and between Siemens Metering Ltd. (which includes the former metering business of Landis & Gyr (Europe) AG) and Siemens Power Transmission & Distribution LLC (which includes the former metering business of Landis & Gyr Utilities Services, Inc.), a Delaware limited liability company (collectively "Siemens"), and ABB Power T&D Company Inc. ("ABB"), a Delaware corporation.

WHEREAS, Siemens and ABB desire to grant and obtain licenses under various patents as defined herein on the terms and conditions specified herein:

NOW THEREFORE, the parties hereto agree as follows:

### **1. Definitions**

- 1.1 **ABB Licensed Patents.** "ABB Licensed Patents" shall mean the following patents: United States Patent Nos. 5,537,333; 5,544,089; 5,548,527; 5,555,508; 5,621,629; 5,631,843; 4,654,588; 4,852,030; 5,537,029; and, 5,457,621 and all continuations, divisionals, reissues and reexams of these patents or resulting from any common parent applications of these patents.
- 1.2 **L&G/Siemens Licensed Patents.** "L&G/Siemens Licensed Patents" shall mean the following patents: U.S. Patent Nos. 4,902,964; 4,987,363; and 5,262,715; and all continuations, divisionals, reissues and reexams of these patents or resulting from any common parent applications of these patents; and EPO Patent No. 524,378 and German Patent No. 94 14 256.4 U1 and all continuations, divisionals, extensions and renewals thereof.

- 1.3 (a) **Net Sales Price.** "Net Sales Price" means the gross sales price less the following items to the extent to which they are included in such gross sales or lease price: (i) trade and quantity discounts (but not cash discounts, advertising allowances, or commissions paid to any salesperson, sales agent or manufacturer's representative); (ii) transportation and insurance costs on shipments to the customer; and (iii) sales, use and other similar taxes.
- (b) **Net Lease Price.** "Net Lease Price" means the cumulative gross lease price payments less: (i) trade and quantity discounts (but not cash discounts, advertising allowances, or commissions paid to any salesperson, sales agent or manufacturer's representative); (ii) transportation and insurance costs on shipments to the customer; and (iii) sales, use and other similar taxes.
- 1.4 **Running Royalty Period.** "Running Royalty Period" shall mean the time period commencing July 15, 2000 and continuing through the end of the Term of this Agreement as defined in Section 3.1.
- 1.5 **Licensed Products.** "Licensed Products" means electric meters falling within the scope of the ABB Licensed Patents or kits or components specifically designed for use therewith.
- 1.6 **Specific Licensed Product(s).** "Specific Licensed Product(s)" means electric energy meters or kits or components specifically designed for use in such electric energy meters embodying one or more of the following features:

- (a) A programmable meter for electronically measuring electrical energy used by a residential, commercial or industrial customer, the meter comprising processing circuitry receiving voltage and current signals corresponding to at least two phase service, the processing circuitry

comprising 3 sigma delta ( $\Sigma\Delta$ ) analog to digital (A/D) converters, a first  $\Sigma\Delta$  A/D converter receiving only the voltage signals corresponding to each phase, a second  $\Sigma\Delta$  A/D converter receiving only the current signals corresponding to each phase, and a third  $\Sigma\Delta$  A/D converter used to simultaneously sample a voltage reference for a given phase or to simultaneously sample a phase different from the given phase for non-Blondel compliant applications.

(b) A programmable meter for electronically measuring electrical energy used by a residential, commercial or industrial customer, the meter comprising processing circuitry receiving voltage and current signals corresponding to at least two phase service, the processing circuitry comprising plural analog to digital (A/D) converters, each A/D converter having a conversion rate of 7200 Hz (+/- 10%), an A/D channel having a conversion rate of 2400 Hz (+/- 10%) or a digital resolution of 21 bits (20 bits plus sign).

(c) A meter for electronically measuring electrical energy used by a residential, commercial or industrial customer, the meter comprising first and second processors, the first processor receiving voltage and current inputs and determining energy based thereon and having an associated memory from which a program code is executed (program code being defined as DSP code resident in the meter that can be executed by the first processor during metering operations), the meter also comprising one or both of a communications medium for communicating externally with one of the processors and/or a non-volatile memory, the program code for the first processor being alterable (meaning providing a different meter functionality, e.g., ABB "Alpha Keys" and form changes) in the field (i.e., not in the factory) via either the communications medium or from program code stored

in the non-volatile memory, but specifically not including transferring program code from a non-volatile memory to executable code space (RAM) at initialization, providing that the program code is the same as at first initialization.

(d) A programmable meter comprising a first and second processor for electronically measuring electrical energy used by a residential, commercial or industrial customer, the meter having an interface to provide optional functionality to the meter, where the interface allows direct access to the information generated by the first processor in the meter, (e.g., #38, Figure 1, U.S. Patent No. 5,555,508) wherein direct access does not include an interface connected to the second processor as long as the interface only accesses information after it is processed by the second processor.

(e) A meter for measuring electrical energy having a power supply capable of accepting a range of input voltages and providing a substantially regulated output voltage independent of the input voltage, the power supply comprising a transformer and a switching regulator circuit operatively coupled to a primary winding of the transformer, there being a voltage clamping circuit receiving the input voltage, the voltage clamping circuit being operative to limit the voltage applied to the primary winding or the switching regulator circuit, but specifically not including a meter with a power supply using a voltage clamping circuit that is designed to regulate the voltage applied to the primary winding or switching regulator circuit only when transient over-voltages are present on the line, such as an MOV or surge protection circuit.

(f) A meter for electronically measuring electrical energy having a display comprising three annunciators that are each selectively actuatable to a visible

state and being arranged in a row, the first and the third annunciators in the row being arrow-shaped and being pulsed to the visible state at a rate corresponding to a rate of energy consumption, the second annunciator being pulsed at a rate corresponding to a rate of equivalent disk rotation.

2. Grant

- 2.1 ABB hereby grants, Siemens and its subsidiaries and affiliates, only as long as they are more than 50% owned by Siemens or a parent thereof, a nonexclusive license, with no right to sublicense, to make, have made, import, use, offer to sell, sell or lease Licensed Products and Specific Licensed Products.
- 2.2 No rights, express or implied, are granted under any foreign patents, foreign utility models, or foreign petty patents corresponding to any of the ABB Licensed Patents.
- 2.3 Siemens hereby grants ABB and its subsidiaries and affiliates, only as long as they are more than 50% owned by ABB or a parent thereof, a nonexclusive license, with no right to sublicense, to make, have made, import, use, offer to sell, sell or lease electric power meters under the L&G/Siemens Licensed Patents.

3. Term

- 3.1 The term ("Term") of this Agreement shall commence at the final execution hereof and continue through the expiration of the term of the last-to-expire of the ABB Licensed Patents.

4. Compensation

- 4.1 In consideration of the license granted herein to Siemens by ABB, Siemens shall make a single non-refundable payment to ABB in the amount of two million dollars (USD) (\$2,000,000.00) within five(5) business days of the date of final execution of this Agreement.
- 4.2 In further consideration of the license granted herein to Siemens by ABB, Siemens shall pay a running royalty to ABB at the rate of 5 % of Net Sales or Lease Price of Specific Licensed Products manufactured, sold or leased by Siemens in the United States during the Running Royalty Period. The aforesaid running royalty shall be due and payable within thirty (30) days after the end of each calendar quarter and such payment shall be accompanied by a written royalty report setting forth the number of Specific Licensed Product(s) which have been sold or leased during the preceding quarter, the gross sales price, Net Sales Price of such products and the royalties due thereon or the gross lease price, Net Lease Price and the royalties due thereon.
- 4.3 In consideration of the license granted herein to ABB by Siemens, ABB shall grant Siemens a 2.5 % credit against the 5 % running royalty described in Section 4.2 throughout the Running Royalty Period. The net result of this credit is a 2.5 % royalty on Net Sales Price or Net Lease Price of any Specific Licensed Products subject to royalty during the Running Royalty Period.
- 4.4 The parties agree that this net royalty rate of 2.5 % shall apply throughout the Running Royalty Period regardless of any judicial or administrative determination that any of the patents licensed hereunder are invalid, unenforceable or not patentable.

4.5 During the Running Royalty Period, ABB shall have the right, upon reasonable notice and at its own expense, to have an independent third party acceptable to the parties conduct an annual audit of the sales records, royalty reports and like documentation of Siemens to verify the royalties due under this Agreement but this information shall be used for no other purpose and ABB shall maintain the confidentiality of this information.

4.6 Siemens agrees to keep accurate records and books of account covering all sales or leases made of Specific Licensed Product(s), all orders received for Specific Licensed Product(s), all discounts, transportation charges and taxes subtracted in determining the Net Sales Price or the Net Lease Price, and all Specific Licensed Product(s) in inventory at the close of each calendar quarter. Such records and books of account shall be retained for six years following the period to which they apply.

## 5. Assignment

5.1 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties to this Agreement. This Agreement shall not be assignable by ABB or Siemens, except that ABB and Siemens may assign at any time all of their rights and obligations under this Agreement to any of their parents or wholly-owned subsidiaries, provided, that the parties shall remain liable for the performance of all obligations under this Agreement.

## 6. Warranties and Representations

6.1 ABB warrants and represents that it has the legal right to grant the license set forth in Section 2.1. Siemens warrants and represents that it has the legal right to grant the license set forth in Section 2.3.

**6.2 Preclusion of Patent Challenges**

The parties agree that they will not seek to invalidate or render unenforceable the patents licensed herein, and the parties further agree that they will not take any action that would serve to encourage, finance, contribute or promote any third party or person to challenge or otherwise seek to invalidate or render unenforceable the patents licensed herein. However, nothing in this provision shall limit a party's right to rely upon prior art or prior activities for the purposes of construing the licensed patents or the terms of this Agreement.

**7. Applicable Law and Jurisdiction**

7.1 This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the state of Delaware (without giving effect to the conflict of laws principles thereof). Any and all proceedings relating to the subject matter hereof shall be maintained in the United States District Court for the District of Delaware ("District Court"), which court shall have exclusive jurisdiction for such purpose. ABB and Siemens hereby consent to the continued personal and subject matter jurisdiction of the District Court regarding the enforcement of this Agreement and the Settlement Agreement executed in connection therewith. ABB agrees that Siemens AG has not agreed to or consented to and is not subject to the jurisdiction of the federal, state or local courts of the United States of America for any purpose, including the enforcement of this Agreement and/or the Settlement Agreement.

**8. Enforceability**

8.1 If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions

shall in no way be affected or impaired thereby. If any provision is illegal, invalid or unenforceable, the parties shall, to the extent lawful and practicable, use reasonable efforts to enter into arrangements to reinstate the intended benefits of such provisions.

9. Entire Agreement

9.1 This Agreement and the Settlement Agreement executed in connection herewith contain the entire agreement between the parties hereto with respect to the subject matter hereof and thereof and supersedes all prior agreements and undertakings between the parties relating to the subject matter hereof and thereof.

10. Amendments and Waivers

10.1 All amendments and other modifications hereof shall be in writing and signed by each of the parties hereto. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any right hereunder.

11. Litigation

11.1 The parties agree that notice of any alleged breach of this Agreement shall be provided to the allegedly breaching party at least thirty (30) days prior to the filing of any litigation in connection therewith. The parties further agree that the allegedly breaching party shall have thirty (30) days following receipt of such notice to cure any such alleged breach, and that both parties shall engage in good faith discussions in an effort to amicably resolve any dispute prior to commencement of litigation thereon.

11.2 In regard to any claim by ABB concerning royalties due under this Agreement, ABB shall initiate any litigation against Siemens on such claim within two (2) years of the first sale within the Running Royalty Period of the product that is the subject of the royalty dispute. In any such litigation, (i) the prevailing party shall receive its reasonable attorneys' fees; and (ii) ABB shall be entitled to pre-judgment interest on the back royalties (if any) found to be due ABB in the amount of prime plus 5% in the event ABB prevails.

11.3 In regard to any other claim of breach of this Agreement, the party initiating such litigation shall do so within two (2) years of the occurrence of the alleged breach unless such breach is fraudulently concealed.

## 12. Remedies

12.1 ABB's sole and exclusive remedy for claims pertaining to royalties due hereunder is a suit for recovery of the monetary amounts specified in Section 11.2.

12.2 ABB's and Siemens' sole and exclusive remedy for any other alleged breach of this Agreement shall be a suit for recovery of such actual damages as are caused by such breach.

12.3 Nothing in this Agreement shall preclude the District Court from awarding any just and proper relief if it finds that either party acted in bad faith in connection with any dispute over the terms and conditions of this Agreement or the Settlement Agreement.

13. Termination

13.1 This Agreement is not subject to termination except by written consent of both parties, and the licenses granted hereunder are irrevocable.

14. Notices and Reports

All notices and reports required or permitted to be given by and between the parties under the provisions of this Agreement, shall be in writing and shall for all purposes be deemed to be fully given and received if sent by Registered Mail, postage prepaid, to the respective parties of the addresses:

To ABB:

Dr. John G. Reckleff  
Vice President  
ABB Power T&D Company Inc.  
201 South Rogers Lane  
Raleigh, NC 27610-2107

To Siemens:

John W. Shumar  
Siemens Power Transmission & Distribution, LLC  
100 Forsyth Hall Drive, Suite A  
Charlotte, NC 28273  
P.O. Box 240451  
Charlotte, NC 28224-0451

Jan van Dokkum  
Siemens Power Transmission & Distribution, LLC  
7000 Siemens Road  
Wendell, NC 27591  
P.O. Box 29503  
Raleigh, NC 27626-0503

Dr. Johannes Milde  
Siemens Metering Ltd.  
Feldstrasse 1  
CH-6301 Zug

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date hereof.

**ABB POWER T&D COMPANY INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**SIEMENS METERING LTD. (which  
includes the former metering business of  
Landis & Gyr (Europe) AG)**

By: \_\_\_\_\_

Title: \_\_\_\_\_

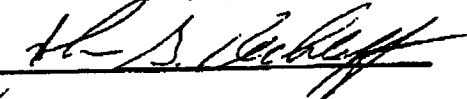
**SIEMENS POWER TRANSMISSION &  
DISTRIBUTION LLC (which includes the  
former metering business of Landis & Gyr  
Utility  
Services, Inc.)**

By: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date hereof.

**ABB POWER T&D COMPANY INC.**

By:   
Title: Executive Vice President

**SIEMENS METERING LTD.** (which includes the former metering business of Landis & Gyr (Europe) AG)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**SIEMENS POWER TRANSMISSION & DISTRIBUTION LLC** (which includes the former business of Landis & Gyr Utility Services, Inc.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date hereof.

ABB POWER T&D COMPANY INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

SIEMENS METERING LTD. (which  
includes the former metering business of  
Landis & Gyr (Europe) AG)

By: *[Signature]*

Title: *President*

SIEMENS POWER TRANSMISSION &  
DISTRIBUTION LLC (which includes the  
former metering business of Landis & Gyr  
Utility  
Services, Inc.)

By: \_\_\_\_\_

Title: \_\_\_\_\_

*[Signature]*  
VP. Digital Devices

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date hereof.

ABB POWER T&D COMPANY INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

SIEMENS METERING LTD. (which  
includes the former metering business of  
Landis & Gyr (Europe) AG)

By: \_\_\_\_\_

Title: \_\_\_\_\_

SIEMENS POWER TRANSMISSION &  
DISTRIBUTION LLC (which includes the  
former metering business of Landis & Gyr  
Utility  
Services, Inc.)

By:  \_\_\_\_\_

Title: President & CEO \_\_\_\_\_

10-14-98

# **EXHIBIT D**

LAW OFFICES

**WOODCOCK WASHBURN KURTZ MACKIEWICZ NORRIS LLP**

PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

RICHARD E. KURTZ  
JOHN J. MACKIEWICZ  
DALE H. MEIST  
JOHN W. CALDWELL  
GARY H. LEVIN  
STEVEN J. ROSSI  
DIANNE S. ELDERKIN  
JOHN P. DONOHUE, JR.  
HENRIK D. PARKER  
SUZANNE E. MILLER  
LYNN B. MOPREALE  
MARK SILUCA  
LAURA GENOVESE MILLER  
JOSEPH LUCCI  
MICHAEL P. DUNHAM  
MICHAEL D. STEIN  
ALBERT J. MARCELLINO  
DAVID R. BAILEY  
DOREEN YATKO TRUJILLO  
BARBARA L. MULLIN  
KEVIN H. PLANNERY  
MICHAEL P. STRAHER  
DAVID A. CHERRY  
LYNN A. MALINOSKI  
CAMILLE M. MILLER  
STEVEN B. SAMUELS  
MICHAEL J. SWOPE  
MICHAEL J. ROMELLA  
HAROLD M. FULLMER  
JOHN E. McLYNN  
JONATHAN M. WALDMAN  
CHAD ZIEGLER  
SWILYN J. O. ATTWELL  
DAVID N. FARSIQU

PAUL K. LEGAARD  
HAUREEN S. GIBBONS  
STEVEN H. MEYER  
THOMAS D. SMITH  
PAUL S. MILCETIC  
JOSEPH R. CONDO  
MICHAEL K. JONES  
FRANK T. GIBBS  
MARK J. ROSEN  
MITCHELL R. BRUSTEIN  
THOMAS E. WATSON  
ERIC M. WARRER  
PETER M. ULLMAN  
RICHARD B. LEBLANC  
DENISE I. MROZ  
JOSEPH D. ROSSI  
ROSALYN P. MORRIS  
GEORGE J. AWAD  
STEVEN D. MABLOWSKI  
S. MAURICE VALLA  
CHMA R. BAILEY  
VINCENT J. ROGIELA  
ROBIN S. QUANTIN  
PATRICK J. FARLEY  
BRIAN J. URBAN  
DEREK D. WOOD  
GREGORY L. HILLMYER  
STEPHEN C. TIMMINS  
RICHARD D. WATKINS  
ERICH M. FALKE  
JANE SMITH INGLESE  
SUSAN E. MURPHY  
RAYMOND N. SCOTT  
DAVID L. MARGUS

ONE LIBERTY PLACE - 46TH FLOOR

PHILADELPHIA, PA 19103

TELEPHONE (215) 568-3100

FACSIMILE (215) 568-3439

woodcock.com

March 9, 2001

SEATTLE OFFICE  
WELLS FARGO CENTER  
999 THIRD AVENUE - SUITE 1600  
SEATTLE, WA 98104  
TELEPHONE (206) 332-1380  
FACSIMILE (206) 624-7317

VIRGIL E. WOODCOCK  
(1908-1974)

INTELLECTUAL PROPERTY LAW

COUNSEL

ROBERT E. WASHBURN  
NORMAN L. NORRIS  
ALBERT W. PRESTON, JR.

OF COUNSEL

ANTHONY J. ROSSI  
KATHLEEN A. MILSARK  
TERENCE P. STROBAUGH

SCIENTIFIC ADVISORS

CHRISTINE A. GODDARD, Ph.D.  
ELLEN M. KLANN, Ph.D.

NY BAR ONLY

IT ALSO WASHINGTON BAR

RESIDENT IN SEATTLE OFFICE

e-mail address: [samuels@woodcock.com](mailto:samuels@woodcock.com)

via registered mail - postage prepaid

John W. Shumar  
Siemens Power Transmission & Distribution, LLC  
100 Forsyth Hall Drive, Suite A  
Charlotte, NC 28273

Jan van Dokkum  
Siemens Power Transmission & Distribution, LLC  
7000 Siemens Road  
Wendell, NC 27591

Dr. Johannes Milde  
Siemens Metering Ltd.  
Feldstrasse 1  
CH-6301 Zug

RE: ABB/SIEMENS PATENT CROSS-LICENSE AGREEMENT

Gentlemen:

As you are aware, the Patent Cross-License Agreement of October 1, 1998 between ABB and Siemens ("the Agreement"), provides that Siemens shall pay ABB a running royalty of 2.5% of Net Sales or Lease Price of Specific Licensed Products manufactured, sold or leased by Siemens in the United States. Specific Licensed Products includes any electronic energy meters or kits or components, embodying one or more of the features listed in Paragraphs 1.6 (a) through (f) of the Agreement. As presently advised, this includes, without limitation, all S-4, Altimus and ZMC meters manufactured, sold or leased in the United States by Siemens beginning July 15, 2000 and continuing through the expiration of the last-to-expire of the ABB Licensed Patents.

ABB has reason to believe that the net sales figures used to calculate the royalty payments forwarded with Siemens' letters to ABB of December 8, 2000, January 16,

WOODCOCK WASHBURN KURTZ MA WICZ & NORRIS LLP

March 9, 2001

Page two

2001 and February 26, 2001 are understated. Therefore, pursuant to paragraph 4.5 of the Agreement, ABB hereby notifies Siemens of its intent to exercise the right to have an independent third party conduct an annual audit of the sales records, royalty reports and like documentation to verify the royalties due under the Agreement. ABB proposes that Quayle Partners of Zionsville, Indiana conduct the audit.

Please contact us at your earliest convenience so that we can move this matter forward expeditiously.

Sincerely,

  
Steven B. Samuels

SBS/jm

cc: Nick Klett  
N.L. Norris  
S.J. Rocci

# **EXHIBIT E**



**PHILADELPHIA**

One Liberty Place, 48th Floor  
Philadelphia, PA 19103  
215-568-3100  
Fax: 215-568-3439

**SEATTLE**

999 Third Avenue, Suite 1606  
Seattle, WA 98104  
206-332-1380  
Fax: 206-624-7317

July 3, 2002

STEVEN B. SAMUELS  
PHILADELPHIA OFFICE  
samuels@woodcock.com

**VIA FACSIMILE**

Peter A. Luccarelli, Jr., Esquire  
Intellectual Property Counsel  
Siemens Corporation  
186 Wood Avenue South  
Iselin, NJ 08830

**RE: ABB/SIEMENS PATENT CROSS-LICENSE AGREEMENT**

Dear Peter:

This is a follow-up to the telephone discussions that we had on Friday, June 21, 2002 and Wednesday, July 3, 2002, in which we discussed a proposal for facilitating a resolution to the present dispute between ABB Inc. ("ABB") and Siemens Power Transmission & Distribution LLC and Siemens Metering Inc. (collectively "Siemens"), over the royalty payments that Siemens has made on sales of its "S4" and "ZMC" products under the Patent Cross-License Agreement (PCLA).

As we discussed, the parties are interested in reaching a prompt resolution to the present dispute, without resort to litigation, if possible. ABB has, however, expressed concern with the provision in Paragraph 11.2 of the PCLA that "[i]n regard to any claim by ABB concerning royalties due under this Agreement, ABB shall initiate any litigation against Siemens on such claim within two (2) years of the first sale within the Running Royalty Period of the product that is the subject of the royalty dispute." Because the Running Royalty Period began on July 15, 2000, any litigation that ABB would be required to initiate to preserve its rights would need to be initiated by July 15, 2002. Recognizing that the parties efforts to resolve the present dispute will extend beyond July 15, 2002, the parties hereby agree as follows:

1. Within twenty (20) days of an agreement between the parties concerning the treatment of confidential information of Siemens, Siemens will provide to ABB an initial statement explaining Siemens' position as to why it believes that certain "S4" and "ZMC" meters sold by Siemens do not constitute "Specific Licensed Products" under the PCLA.



Peter A. Luccarelli, Jr., Esquire  
July 3, 2002  
Page 2

2. Upon receipt by ABB of the initial statement from Siemens, the parties agree to continue to work together to resolve the present dispute.

3. Siemens agrees that it will not assert that Paragraph 11.2 of the PCLA precludes ABB from recovering back royalties due on any sales of any product within the Running Royalty Period set forth in the PCLA, provided that, subject to the other provisions of the PCLA including its notice provisions, ABB initiates any litigation for recovery of such royalties within two hundred ten (210) days from the date of receipt by ABB of the initial statement from Siemens.

Although it is ABB's desire to avoid litigation, it is understood that nothing in this letter agreement or otherwise precludes ABB from initiating litigation anytime before the end of the 210 day period set forth in paragraph 3, should ABB determine that is necessary to preserve or enforce its rights.

Sincerely yours,

A handwritten signature in cursive script that reads 'Steven B. Samuels'.  
Steven B. Samuels

SBS/jm

By the signatures below, the parties hereby indicate their agreement to the terms and conditions set forth in this letter.

Siemens Power Transmission  
& Distribution LLC

Siemens Metering Inc.

ABB Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



Peter A. Luccarelli, Jr., Esquire

July 3, 2002

Page 2

2. Upon receipt by ABB of the initial statement from Siemens, the parties agree to continue to work together to resolve the present dispute.

3. Siemens agrees that it will not assert that Paragraph 11.2 of the PCA precludes ABB from recovering back royalties due on any sales of any product within the Running Royalty Period set forth in the PCA, provided that, subject to the other provisions of the PCA including its notice provisions, ABB initiates any litigation for recovery of such royalties within two hundred ten (210) days from the date of receipt by ABB of the initial statement from Siemens.

Although it is ABB's desire to avoid litigation, it is understood that nothing in this letter agreement or otherwise precludes ABB from initiating litigation anytime before the end of the 210 day period set forth in paragraph 3, should ABB determine that is necessary to preserve or enforce its rights.

Sincerely yours,

Steven B. Samuels

SBS/jm

By the signatures below, the parties hereby indicate their agreement to the terms and conditions set forth in this letter.

Siemens Power Transmission  
& Distribution LLC Inc. 7/11/02

Siemens Metering Inc.

ABB Inc.

By:

By:

ASSOCIATE CHIEF OF COUNSEL  
SIEMENS CORPORATION

Its: President & CEO

Its: ATTORNEY

Its: \_\_\_\_\_

Date: 4-04-02

Date: 5 JULY 2002

Date: \_\_\_\_\_

July 11, 2002

JUL 03 '02 11:33

+2155683438

PAGE 03

\*\* TOTAL PAGE 04 \*\*

07/08/2002 FRI 12:32 [TX/RX NO 0153]



Peter A. Luccarelli, Jr., Esquire  
July 3, 2002  
Page 2

2. Upon receipt by ABB of the initial statement from Siemens, the parties agree to continue to work together to resolve the present dispute.

3. Siemens agrees that it will not assert that Paragraph 11.2 of the PCLA precludes ABB from recovering back royalties due on any sales of any product within the Running Royalty Period set forth in the PCLA, provided that, subject to the other provisions of the PCLA including its notice provisions, ABB initiates any litigation for recovery of such royalties within two hundred ten (210) days from the date of receipt by ABB of the initial statement from Siemens.

Although it is ABB's desire to avoid litigation, it is understood that nothing in this letter agreement or otherwise precludes ABB from initiating litigation anytime before the end of the 210 day period set forth in paragraph 3, should ABB determine that is necessary to preserve or enforce its rights.

Sincerely yours,

A handwritten signature in cursive script that reads 'Steven B. Samuels'.  
Steven B. Samuels

SBS/jm

By the signatures below, the parties hereby indicate their agreement to the terms and conditions set forth in this letter.

Siemens Power Transmission  
& Distribution LLC

Siemens Metering Inc.

ABB Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

By: A handwritten signature in cursive script, likely belonging to a representative of ABB Inc.

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Its: Senior VP & GM

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: July 9, 2002

# EXHIBIT F

## FULLY REDACTED

# EXHIBIT G

## FULLY REDACTED

# EXHIBIT H

## FULLY REDACTED

# EXHIBIT I

## FULLY REDACTED

# EXHIBIT J

## FULLY REDACTED

# EXHIBIT K

**Samuels, Steven B. (Woodcock Washburn)**

---

From: jbollinger@morganlewis.com  
Sent: Tuesday, January 10, 2006 5:21 PM  
To: Samuels, Steven B. (Woodcock Washburn)  
Cc: rmacchio@morganlewis.com  
Subject: RE: Elster/L+G

We are agreeable to a one week extension to Jan 19th. Please send me a confirming letter

jim

James M. Bollinger  
Morgan Lewis & Bockius  
101 Park Avenue  
New York, NY 10178  
Jbollinger@morganlewis.com  
212-309-2102

"Samuels, Steven  
B. (Woodcock  
Washburn)"  
<samuels@woodcock  
.com>

jbollinger@morganlewis.com

To

cc

01/10/06 10:55 AM

RE: Elster/L+G

Subject

Jim, thank you for the prompt reply. While we await Landis+Gyr's response to the questions in my other letter, and while our consultant evaluates the previous information, we are likely to run up against the end of our current extension - this Thursday. Please let us know whether Landis+Gyr will agree to extend the negotiation period one additional week to January 19? Please let me know today, if possible.

Best regards,  
Steve

Steven B. Samuels  
Woodcock Washburn LLP  
One Liberty Place - 46th Floor  
Philadelphia, PA 19103  
215-557-5969 (voice)  
215-568-3439 (fax)  
samuels@woodcock.com

-----Original Message-----

From: jbollinger@morganlewis.com [mailto:jbollinger@morganlewis.com]

Sent: Monday, January 09, 2006 5:44 PM  
To: Samuels, Steven B. (Woodcock Washburn)  
Subject: Re: Elster/L+G

steve - we have no objection to your proposed expert assisting on this matter.

Jim

James M. Bollinger  
Morgan Lewis & Bockius  
101 Park Avenue  
New York, NY 10178  
Jbollinger@morganlewis.com  
212-309-2102

"Samuels, Steven  
B. (Woodcock  
Washburn)"  
<samuels@woodcock  
.com>

jbollinger@morganlewis.com

To

cc

01/06/06 02:13 PM

Elster/L+G

Subject

Jim,

Please see the attached.

Steve

<<2006-01-06-Ltr to Bollinger-SBS.PDF>> (See attached file: 2006-01-06-Ltr to Bollinger-SBS.PDF)

DISCLAIMER

This e-mail message is intended only for the personal use of the recipient(s) named above. This message may be an attorney-client communication and as such privileged and confidential. If you are not an intended recipient, you may not review, copy or distribute this message. If you have received this communication in error, please notify us immediately by e-mail and delete the original message.

DISCLAIMER

This e-mail message is intended only for the personal use of the recipient(s) named above. This message may be an attorney-client communication and as such privileged and confidential. If you are not an intended recipient, you may not review, copy or distribute this message. If you have received this communication in error, please notify

us immediately by e-mail and delete the original message.

# EXHIBIT L

## FULLY REDACTED

# EXHIBIT M

## FULLY REDACTED

# EXHIBIT N

## FULLY REDACTED

**CERTIFICATE OF SERVICE**

I, Julia Heaney, hereby certify that on February 9, 2006, I electronically filed the redacted version of Elster Electricity LLC's Motion to Enforce Settlement Agreement with the Clerk of the Court using CM/ECF, which will send electronic notification to:

Oleh V. Bilynsky, Esquire  
Connolly Bove Lodge & Hutz LLP

I also certify that copies were caused to be served on February 9, 2006 upon the following in the manner indicated:

**BY FEDERAL EXPRESS**

James M. Bollinger, Esquire  
Morgan, Lewis & Bockius LLP  
101 Park Avenue  
New York, NY 10178-0060

/s/ Julia Heaney (#3052)  
Morris, Nichols, Arsht & Tunnell LLP  
1201 N. Market Street  
P.O. Box 1347  
Wilmington, DE 19899  
(302) 658-9200  
jheaney@mnat.com